IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8090 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UCO BANK EMPLOYEES' ASSOCIATION

Versus

LIFE INSURANCE CORPORATION OF INDIA

Appearance:

1. Special Civil Application No. 8090 of 1989

MR. A.J. SHASHTRI, Advocate for the Petitioner

MR. AMIT J SHAH, Advocate for the Respondent No. 1

MR. MEHUL VAKHARIA, Advocate for the Respondent No. 2

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 26/02/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.K.ABICHANDANI for the Court)

1. The petitioner Trade Union challenges the provisions of Section 3 of the Insurance Act, 1938 and Section 30 of the Life Insurance Corporation Act, 1956, as unconstitutional, on the ground that they violate the fundamental rights guaranteed by Articles 14 and 19(1)(c) of the Constitution of India. The petitioner also challenges the communication at Annexure "B" dated 22nd May 1989 sent by the respondent No.1 - Life Insurance Corporation of India to the petitioner Trade Union informing it that its proposed "UCO Bank Employees' Death Benefits Scheme" contravened the provisions of Section 3 of the Insurance Act, 1938 and Section 30 of the Life Insurance Corporation Act, 1956 and the notice dated 6-11-1989, at Annexure "D" to the petition, calling upon the petitioner to withdraw the said Scheme.

2. According to the petitioner, it is a registered trade union in existence since 1957 and as per the rules constituting the Union, one of its object was to provide funds for the relief of the needy or distressed members or the families of such members, under Rule 3(k). Apart from the objects contained in the Rules of the petitioner trade union, reliance was placed on Sections 15(f) and (g) of the Trade Unions Act, 1926, in justification of the Scheme. As per the said Scheme, a member was required to pay Rs.50 as admission fee and then to contribute Rs.10 every month and such member was eligible for the benefit of payment of Rs.50,000 to his nominee in the event of his death and on permanent disablement, a member was to be paid the amounts stipulated under the Scheme. According to the petitioner, the provisions of Section 3 of the Insurance Act, 1938 and Section 30 of the Life Insurance Corporation Act, 1956, refer to `life insurance business' and did not refer to `life insurance activities'. The Scheme like the one undertaken by the petitioner was not a business venture and was, therefore, outside the scope of this provision, as contended in paragraph 12 of the petition. It is contended that the registered trade union can legitimately undertake by way of welfare measure, activity for providing financial relief to the members of the family of a deceased member or in the event of the disablement of a member suffering from physical disablement. It is contended: "Section 30 of the Life Insurance Corporation Act, 1956 curtails the freedom of association of a registered Trade Union inasmuch as it curtails its freedom to provide financial help by way of welfare measure to the family members of

the deceased member.". Such a restriction cannot be saved by Article 19(4) of the Constitution of India since it was not a reasonable restriction contemplated thereunder and therefore, it was violative of Article 19(1)(c). It is also contended that the provision imposes unreasonable and arbitrary restriction on the legitimate welfare activities of a registered trade union and therefore, was violative of the provisions of Article 14. Section 3 of the Insurance Act, 1938 was violative of Article 14 for the same reason. According to the petitioner, from May 1989 onwards, there were about 1300 employees of the bank paying contribution under the Scheme and the bank was deducting contribution from the salary of the concerned employee as per their written authorization.

3. It appears from the record that, while issuing "Rule" on the petition on 27-11-1989, ad-interim relief in terms of paragraph 17(C)(ii) was granted, as per which, the respondent No.2 was restrained from discontinuing the practice of deduction of contribution towards the Scheme from the salary of the employees who had given written authorization. It will be seen that the prayer in terms of Clause 17(C)(i) of the petition, by which an interim relief was prayed for restraining the respondent No.1 from taking action of discontinuing the scheme and from taking any legal proceedings against the petitioner, was not granted. The effect of the interim relief granted was not that the Scheme was to continue, but the collection of the contribution by the employer respondent No.2 was not to be stopped.

4. It was argued by the learned counsel appearing for the petitioners that Section 30 of the Life Insurance Corporation Act imposes an unreasonable restriction on the welfare activities carried out by the petitioner which was a recognized trade union though such activity was permissible under Section 15 of the Trade Unions Act, 1926. It was also argued that Section 30 violates "freedom of association in carrying on the activity of the union and therefore, is hit by Article 19(1)(c) of the Constitution". The learned counsel submitted that Section 30 was a provision of a general law and was in conflict with the provisions of the special statute, namely, Section 15 of the Trade Unions Act, 1926. Therefore, Section 15 of the Trade Unions Act, 1926 would prevail over Section 30 of the Life Insurance Corporation Act, 1956 and the welfare activity carried on by the petitioner association under the Scheme would be a permissible activity, and does not violate Section 30 of the Life Insurance Corporation Act, 1956. It was then

argued that section 30 of the said Act was an arbitrary provision inasmuch as all the persons other than the Life Insurance Corporation were deprived from carrying on the welfare activity of this nature. The provision of Section 30 was, therefore, violative of Articles 14 and 19(1)(c) of the Constitution of India. It was finally contended that, even if the provisions of Section 30 were attracted, the petitioner trade union was not doing any life insurance business, looking to the nature of the Scheme, since there was no profit motive involved under the Scheme.

5. The learned counsel appearing for the respondent No.1 submitted that the provisions of the Scheme clearly indicated that, under the Scheme, contract of insurance upon human life whereby assurance of payment of money on death was contemplated. And, therefore, the petitioner was doing `life insurance business' under the provisions of the Insurance Act, 1938, which could not have been done without registration contemplated by Section 3 thereof. It was submitted that, under Section 30 of the Life Insurance Corporation Act, 1956, it was the exclusive privilege of the Corporation to carry on the `life insurance business' in India, and, on and from the appointed day, any certificate of registration under the Insurance Act held by any insurer immediately before the appointed day shall cease to have effect in so far as it authorizes the insurer to carry on the life insurance business in India. It was submitted that, having regard to the object and scheme of the Life Insurance Corporation Act, there was no violation of any fundamental rights guaranteed by Article 14 or 19(1)(c) of the Constitution by enacting Section 30 of the said Act. It was also contended that the petitioner association was not a citizen and therefore, the fundamental right guaranteed by Article 19(1)(c) of the Constitution to a citizen, cannot be invoked by such an association.

6. The learned counsel appearing for the respondent No.2 bank supported the contentions raised on behalf of the respondent No.1 - Corporation and opposed the petition. He submitted that it is only because of the interim order in terms of paragraph 17(C)(ii) that the respondent No.2 has continued to deduct the contribution on the basis of the authorization letter and that, they would abide by the directions that may be given by the Court in this petition.

7. The Scheme known as "UCO Bank Employees' Death Benefits Scheme", a copy of which is at Annexure "A" to

the petition, was framed with the object of extending financial help to the member's family at the time of his / her death or at the time of permanent disablement of the member making him / her incapable of earning either in Bank or elsewhere to the extent of the limit available under the Scheme. An amount of Rs.50/- towards admission fee per member was to be collected, which was not to be refunded. Every member was required to contribute Rs.10/- per month and the bank was authorized to deduct that amount as per the authority letter which was required to be executed by each member. Every member was required to nominate a person to whom the benevolent fund was to be paid at the time of his / her death. The Scheme came into effect from 1st May 1989. Under Clause (7) of the Scheme, the existing employees and the new recruits were made eligible as provided therein. Clause (10), which related to refund of contribution, provided that, only in case of retirement from the Bank's service, 50% of the amount regularly / continuously contributed by the member shall be refunded without interest, and that no refund of contribution shall be made in case of discontinuation of membership for reasons other than retirement. Clauses (11) and (12) of the Scheme, which have a bearing on the question as to whether the work of the Scheme constituted "life insurance business" on the part of the petitioner, read as under :

"11. BENEFIT UNDER THE SCHEME :

At the initial stage, an amount of Rs.50,000/- or an amount equivalent to admission fee of all the members as on 1/5/1989, whichever is less, shall be paid to the nominee of the deceased member who joined the Scheme before the effective date of the Scheme. In case of permanent disablement of any member to the extent that it makes him / her incapable of earning either in Bank or elsewhere, an amount of Rs.25,000/- or any limit fixed by General Body shall be paid to him / her. However, limit of the benefit to the existing employees becoming members after the effective date of the Scheme shall be on the basis of the corresponding limit that was available to the members from the effective date of the Scheme itself. Such late entrants shall be considered at par with others only after the expiry of three years from the date of their becoming members under the Scheme, including the twelve months of debarment from benefit.

12. PAYMENT OF BENEVOLENT FUND :

(i) Payment of the benevolent fund to the nominee of the deceased shall be made in the following manner :

(a) 20% cash / cheque at the time of death; and

(b) 80% of the amount shall lie with the Scheme for one year during which period monthly interest at the maximum rate available in the Bank on that amount shall be paid to the nominee. Only after the expiry of one year period, the full payment of the rest of the benevolent fund shall be paid to the nominee."

By Clause (19) of the Scheme, it was provided that the funds of the Scheme shall be invested in UCO Bank under its Fixed Deposit Scheme and no advance payment or loan shall be made to any member from the funds of the Scheme. It was provided therein that, the funds collected under the Scheme shall exclusively be used towards death and other benefits provided under this Scheme and for no other purpose whatsoever. In the event of dissolution of the scheme, balance funds available under the scheme shall be used exclusively for the welfare measures of the members of the union as may be decided by the general body of members availing the benefit of the scheme.

8. In the context of the above Scheme, it was urged that the petitioner association had devised only welfare measures for its members and their families on their death and such activity was not business so as to attract the provisions of Section 30 of the Life Insurance Act, 1956.

9. The Life Insurance Corporation Act, 1956, which came into force from 18th June 1956, was enacted to provide for the nationalization of life insurance business in India by transferring of such business to a Corporation established for the purpose and to provide for the regulation and control of the business of the Corporation and the matters connected therewith or incidental thereto. The Corporation was established under Section 3(1) of the Act as a body corporate having perpetual succession, capable of acquiring, holding and

disposing of properties. Under Section 6(1), subject to the rules, if any, made by the Central Government, it was general duty of the Corporation to carry on life insurance business, whether in or outside India. Under Section 30 of the Act, the Corporation was given the exclusive privilege of carrying on the life insurance business. Section 30, the constitutionality of which is challenged on the ground of violation of Articles 14 and 19(1)(c), reads as under :

"30. Corporation to have the exclusive privilege of carrying on life insurance business-

Except to the extent otherwise expressly provided in this Act, on and from the appointed day, the Corporation shall have the exclusive privilege of carrying on life insurance business in India; and on and from the said day any certificate of registration under the Insurance Act held by any insurer immediately before the said day shall cease to have effect in so far as it authorizes him to carry on life insurance business in India."

9.1 The phrase `life insurance business' occurring in Section 30 has not been defined in the said Act, but it has been provided in Section 2(10) of the Life Insurance Corporation Act, 1956 that, all other words and expressions used but not defined in the Act and defined in the Insurance Act shall have the meanings respectively assigned to them in that Act. Under Section 2(11) of the Insurance Act 1938, the expression `life insurance business' has been defined so as to, inter alia, mean the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life.

10. Having regard to the contents of Clause 11 of the Scheme and to the provisions relating to its membership, it is clear that the contractual relationship is brought about between the association and its members which was to be governed as per the various clauses of the Scheme, including clause 11 under which the benefit under the Scheme was to be given to the nominee of the deceased member. An amount of Rs.50,000/- or an amount equivalent to admission fee of all the members as on 1-5-1999, whichever was less, was to be paid to the nominee of the

deceased member who joined the Scheme before the effective date of the Scheme. Payment of an amount of Rs.25,000/- in case of permanent disablement of any member was also provided for. Having regard to the specific definition of the phrase `life insurance business', it cannot be construed by reference to the abstract meaning of the word `business', and the sense in which the phrase is defined in Section 2(11) of the Insurance Act has to be attached to the phrase while reading it in the provisions of Section 30 of the Life Insurance Corporation Act, 1956. Therefore, the contractual relationship which is brought about under the Scheme between the members and the petitioner association by which periodic contribution was to be made by the members for getting the benefit of payment of money assured on death of the member, as per clause 11, clearly indicates that the petitioner was doing `life insurance business' within the meaning of Section 30 of the Life Insurance Corporation Act, 1956 read with Section 2(11) of the Insurance Act, 1938. There is, therefore, no substance in the contention that the petitioner was not doing any business since it was not having a profit motive and therefore, the provisions of Section 30 of the said Act were not attracted.

11. The contention that the provisions of Section 30 of the Act are violative of Article 19(1)(c) of the Constitution has been canvassed on an assumption that Article 19(1)(c) relates to freedom of an association in doing some activity. Under Article 19(1)(c) of the Constitution, all citizens have the right "to form associations or unions". The provisions of the said Scheme have no bearing on the question of forming of associations or unions. The said Scheme is prepared under some purported objective of the petitioner association. An association or a union can surely take various steps for the welfare of its members but that is altogether a different matter from formation of an association or a union itself. Section 30 of the said Act does not prevent formation of associations or unions and has absolutely no bearing on the question of such formation. The question whether the activity undertaken by an association or union is in accordance with law or not, has no bearing on its formation. Therefore, the challenge against the provision of Section 30 of the Act on the ground that it violates the provisions of Article 19(1)(c) of the Constitution is wholly misconceived and baseless.

12. The provision of Section 30 of the said Act came up for consideration by the Supreme Court in Life

Insurance Corporation of India v. Vishwanath Verma, reported in AIR 1995 SC 189, in the context of a similar scheme which was formulated by Jabalpur Municipal Corporation for the the benefit of its employees. That Scheme provided that, in the event of death of an employee while in service, certain amounts were payable to the dependents, depending upon the rate of monthly contribution (Rs.10/- for the assured sum of Rs.10,000/and Rs.5/- for the assured sum of Rs.5,000/-). The Supreme Court held that the Scheme run by the Jabalpur Municipal Corporation amounted to "life insurance business", and that Section 30 applied in all its rigour. It was held that it is the Life Insurance Corporation alone which was vested with the power to run such a business. In paragraph 18 of the judgement, the Supreme Court held that the statement of objects and reasons of the said Act clearly points out that all the contracts for assurance executed by the Corporation are guaranteed by the Central Government, which was evident from Section 37 of the Act. If, therefore, under Section 30, Life Insurance Corporation is to have the exclusive privilege of carrying on life insurance business in India, it was illegal on the part of the Municipal Corporation to run the said Scheme. The ratio of the said decision in Life Insurance Corporation of India (supra) squarely applies to the present Scheme under which the petitioner has started `life insurance business' in contravention of the provisions of Section 30 and without obtaining any registration required by Section 3 of the Insurance Act, 1938 for doing any insurance business. The provisions of the Life Insurance Corporation Act enacted by the Parliament for the nationalization of the life insurance business in India entrusting the exclusive privilege of life insurance business to the Corporation, which functions, subject to the rules of the Central Government, are neither discriminatory nor arbitrary and the Corporation, having regard to its nature and the object sought to be achieved by the provisions of the Act and the need felt by the Parliament for the nationalization of the life insurance business, has been rightly treated as a separate class by itself. The challenge against the provisions of Section 30 of the Act on the ground that they violate Article 14 of the Constitution, therefore, fails.

13. The contention raised on behalf of the petitioner that, Section 15 of the Trade Unions Act, 1926, particularly Clauses (f) and (g), by which the general funds of a registered trade union could be spent with an object to provide allowances to members or their dependents on account of death, old age, sickness,

accident or unemployment of such members and on the issue of or undertaking of liability under policies of assurances on the lives of members or under the policy insuring the members against sickness, accident or unemployment, overrides the provisions of Section 3 of the Insurance Act, 1938, because, the former was a special law while the latter was a general legislation, is not borne out from the provisions of Section 15 of the Trade Unions Act, 1926 and Section 30 of the Life Insurance Corporation Act, 1956. Section 15 of the Trade Unions Act, 1926, which falls in Chapter 3, relating to rights and liabilities of registered trade unions, specifies the objects on which the general funds of the Trade Union may be spent. The object indicated in Clause (f) that the fund may be spent on allowances to members or their dependants on account of death, old age, sickness, accidents or unemployment of such members, cannot be so read as to authorize running of life insurance business in contravention of Section 30 of the Life Insurance Corporation Act, 1956. The provisions of Section 15 of the Trade Unions Act are not, in pith and substance, law enacted on the subject of insurance. The provisions of the Trade Unions Act are, in pith and substance, enacted to provide for the registration of the Trade Unions and in certain respects to define the law relating to registered Trade Unions. Therefore, on the question of the subject matter of "insurance", the provisions of Trade Unions Act, 1926 can have no bearing whatsoever and the provisions of the Life Insurance Corporation Act, 1956 would, in fact, be specific provisions which, in pith and substance, deal with the subject of life insurance. Therefore, in the matter of life insurance business, the provisions of the Life Insurance Corporation Act alone will prevail and the provisions of Section 15 of the Trade Unions Act, 1926 must necessarily be construed harmoniously with the provisions of the Life Insurance Corporation Act so as to make the provisions of Section 30 of the Life Insurance Corporation Act effective. The provisions of Clauses (f) and (g) of Section 15 of the Trade Unions Act, are not capable of being interpreted so as to entitle the Trade Unions to carry on life insurance business by entering into contract under a scheme of this nature under the terms of which payment of money is assured on death of a member subject to payment of monthly contributions. The amount which is paid for a contract of insurance upon human life of the nature contemplated under the Scheme would be premium which is described as contribution. The arrangement of this nature under the Scheme is entirely different from mere financial assistance that may be given to the members or their families as a social

welfare measure so long as it does not amount to contract of life insurance contemplated by the provisions of Section 30 of the Life Insurance Corporation Act, 1956 read with Section 2(11) of the Insurance Act, 1938. The contention that Section 15 of the Trade Unions Act, 1926 enables the petitioner to give cover of life insurance to its members by a Scheme cannot be spelt out from the provisions of Section 15, the purpose of which is merely to regulate the spending of funds by the registered trade unions. The provision regulating spending of the funds by a registered trade union, cannot be construed to be a provision enabling the union to do any activity which is contrary to law. The contention that the provisions of Section 15 of the Trade Unions Act, 1926, override the provisions of Section 30 of the Life Insurance Corporation Act, 1956, therefore, fails.

14. For the foregoing reasons, the petition fails and is hereby rejected. Rule is discharged with no order as to costs. Interim relief stands vacated.

15. The amounts which have been collected earlier and pursuant to the interim orders by way of contributions or deductions under the Scheme shall, alongwith interest accrued thereon, be refunded to the employees from whom they have been collected, and the bank will deal with the fixed deposits that may be lying with it from the amounts collected as per the said Scheme in light of this judgement.

[R.K.ABICHANDANI, J.]

[D.H.WAGHELA, J.]

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